

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ERIC L. LENTZ)	
Claimant)	
VS.)	
)	Docket No. 234,402
LEE WILSON CONSTRUCTION, INC.)	
Respondent)	
AND)	
)	
KANSAS BUILDING INDUSTRY WORKERS')	
COMPENSATION FUND)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the July 30, 1999 Order entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

This is a claim for an accidental injury that allegedly occurred on July 21, 1997. Following a prehearing settlement conference, the Judge entered an order for an independent medical examination of claimant. By Order dated June 16, 1999 the Judge authorized Dr. Truett Swaim to examine claimant and provide his opinion of whether claimant has any permanent impairment of function as a result of the alleged accident and, if so, what percentage of impairment exists under the AMA Guides. Because the parties could not agree on the language for a joint letter to Dr. Swaim, counsel reappeared before the ALJ on July 30, 1999 to settle their dispute. The Judge's July 30, 1999 Order resolved the issue in claimant's favor.

Respondent and its insurance carrier contend the Judge erred and allegedly exceeded his jurisdiction and authority by not including in the letter to the independent medical evaluator the following language:

Finally, request is made as to your opinion of what percentage of any permanent impairment you find is the result of a condition that pre-existed the alleged accident or is the result of Mr. Lentz's everyday living activities and/or natural aging process.

The only issues before the Board on this appeal are:

1. Did the Judge exceed his jurisdiction and authority?
2. Does the Board have the jurisdiction to review this interlocutory order?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

1. This appeal should be dismissed.
2. The Workers Compensation Act specifically grants the Division the authority to appoint neutral health care providers to evaluate injured workers.¹ Therefore, the Judge did not exceed his jurisdiction and authority by ordering the evaluation.
3. An order for an independent medical evaluation is an interlocutory order as it is neither a preliminary hearing award of benefits entered under the preliminary hearing statute² nor a final award.
4. The Appeals Board's jurisdiction to review appeals is governed by K.S.A. 1998 Supp. 44-534a and K.S.A. 1998 Supp. 44-551. Those statutes grant the Appeals Board the jurisdiction to review (1) certain preliminary hearing findings and (2) final orders and awards. Neither statute grants the Board the authority to review the interlocutory order now in issue.

WHEREFORE, the Appeals Board dismisses this appeal leaving the July 30, 1999 Order in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Matthew S. Crowley, Topeka, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

¹ See K.S.A. 1998 Supp. 44-510e and K.S.A. 44-516.

² K.S.A. 1998 Supp. 44-534a.